Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Advanced Television Systems	)	MM Docket No. 87-268
and Their Impact Upon the	)	
Existing Television Broadcast	)	
Service	)	

To: The Commission

PETITION FOR RECONSIDERATION AND PARTIAL CLARIFICATION SUBMITTED BY PAXSON COMMUNICATIONS LPTV, INC.

Paxson Communications LPTV, Inc., ("Paxson"), licensee of numerous low power television and translator stations located throughout the United States (as listed in Attachment A), by its counsel, hereby petitions for reconsideration of the *Fifth Report and Order* in MM Docket No. 87-268, FCC 97-116 (rel. Apr. 21, 1997) ("*Fifth R&O*") and the *Sixth Report and Order* in MM Docket No. 87-268, FCC 97-115 (rel. Apr. 21, 1997) ("*Sixth R&O*") (collectively "*R&Os*"), as it affects the licensee's collective stations for the reasons described herein. Paxson supports efforts made by the Commission to mitigate the consequences of the DTV Table on low power stations. Nonetheless, there are several elements of the Commission's DTV rules that require reconsideration if DTV is to become a true success for all broadcasters and television viewers[1/].

To illustrate the extent of the effect of the DTV Table on low power stations, as the attached engineering report demonstrates ("Attachment B"), only four of Paxson's 20 LPTV

1/ By low power stations, Paxson includes both LPTV and TV translators. The requests throughout the petition extend to both groups.

stations avoid the threat of displacement. However, those non-displaced stations are still detrimentally affected by the *R&Os* because they are generally located on Channels 60-69, spectrum that the Commission is dedicated to recovering for use in alternate services. Paxson faces the situation that all of its LPTV stations may be forced to cease operation at some point in the transition period. Because of these serious circumstances, Paxson urges the Commission to consider its requests.

I. The Commission Must Show Why Protection of Low Power Operators is not Possible

The Commission, in the proceedings prior to the adoption of the DTV Table of Allotments, has consistently maintained that the protection of low power operations was not possible.[2/] However, just as consistently, the Commission has refused to provide more than conclusory support for its position. For example, the Commission could have easily demonstrated that LPTV protection was not feasible, if, indeed, that was the case, by generating an "LPTV-DTV" Table utilizing the same computer program that produced the DTV Table. Paxson believes that such a showing would have represented only a marginal increase in effort, but would have conclusively shown whether LPTV protection was possible. In other words, the Commission has not demonstrated that LPTV stations *cannot* be protected, and this seems particularly confusing in light of the drastic consequences facing most low power stations and the relative ease with which the Commission could have made its showing.

Without a demonstration that the DTV Table of Allotments could not have accommodated LPTV and TV translator stations, the Commission cannot validly assert that the

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2/ *See, e.g., Sixth R&O* at ¶114.

Table reflects the most efficient use of spectrum and is somehow "optimum." Consequently, Paxson urges the Commission, at the very least, to use its computer program to generate an alternate table of allotments that would accommodate low power operations and demonstrate why that table is inferior to its adopted DTV Table.

II. The Commission's Concept of "Secondary" Status of Low Power Operations Cannot Apply in the Face of Wholesale Changes to the Allotment Table

Paxson applauds the Commission's efforts in the *Sixth R&O* to ameliorate the drastic effect of the DTV Table on low power operations. The Commission has recognized that LPTV and translator stations have grown into a viable service that greatly benefits the public. The success of low power operations is in no small part due to the Commission's support throughout the years, despite the stations' "secondary" status.

Paxson acknowledges that LPTV stations operate on a secondary basis, and it will not attempt here to reiterate the numerous arguments rejected by the Commission in determining that LPTV stations will be displaced by new full service DTV stations. Paxson does believe, however, that whatever meaning "secondary" status has had for low power stations, it surely cannot include the effective obliteration of low power operations. "Secondary" means subjugation, not annihilation. The Commission must recognize that the concept of "secondary" at the very least must mean what it did when the LPTV rules were adopted and prior to any contemplation of a wholesale overhaul of the allotment table. Which is to say that when secondary status was assigned, stations had notice that they might be forced to another channel, but not forced completely off the air. Indeed, the success of the low power stations and the Commission's treatment of the group as a legitimate and important broadcast service (by, *e.g.*, requiring licenses, applications, technical showings, fees, etc.) indicate that the Commission

considers low power operations to be anything but "secondary." Because the secondary status of low power operations cannot justify this total evisceration of low power stations, the Commission must reconsider its decision not to accommodate low power stations in generating its DTV Table of Allotments.

III. The Commission Should Establish Clear Procedures for Relief for Displaced Low Power Stations.

The Commission stated that it would accept applications by displaced low power stations for replacement channels on a first-come, first-served basis without being subject to competing applications.[3/] The Commission has not, however, clearly stated the definition of "displaced" for purposes of determining when a low power station can *file* for a replacement channel. In other words, was a low power station displaced by the release of the DTV Table or will it *be* displaced when the DTV full-power station is fully operational? Simply put, the Commission should clarify when the window opens for these applications and that clarification should permit the filing at the earliest opportunity (*i.e.*, upon issue of a reconsideration decision).

The Commission should also clarify that all of the rules adopted in the *R&Os* which relax technical standards regarding interference, field strength and the like for low power station modifications[4/] apply to applications that are currently pending.

The Commission should further clarify that, consistent with free market principles, low power stations may convert to digital transmissions at any time prior to the recovery date. Station owners should be free to respond to market forces and determine for themselves the

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3/ *Sixth R&O* at ¶144.

4/ *Id.* at ¶¶145-147.

appropriate time to convert to digital transmissions. Similarly, there is little reason to require low power stations to continue analog broadcasts if digital receiver market penetration reaches high levels.

Paxson believes that the Commission was correct to permit displaced low power stations to request operation on Channels 60-69 on a non-interfering basis.[5/] In the face of spectrum recovery in these channels, however, the Commission should clarify that "non-interfering basis" and "secondary" status does not implicate that LPTV or TV translator stations could be displaced by licensees of the yet identified service that will operate in this spectrum—at least before the end of the transition period.

IV. The Commission Should Promptly Initiate a Rule Making for a Permanent Class of Low Power Stations.

The Commission, having recognized the benefits provided by low power stations, must remove the secondary status attached to LPTV and TV translator stations. The time is ripe for the Commission to create a permanent class of low power stations. The DTV Table has displaced scores of stations with little current prospect for reallotment. With so many nomadic low power stations, the Commission could reduce the existing hardships by establishing a home for LPTV stations while nearby vacant spectrum is unassigned. Accordingly, the Commission should initiate a rule making that would establish a permanent class for these stations.

5/ *Sixth R&O* at ¶142.

CONCLUSION

While the Commission has taken applaudable steps to reduce the hardships to low power stations posed by the transition to digital operation, Paxson believes that the Commission has not demonstrated that it cannot further protect deserving low power stations, especially where substantial efforts to do so are not required. Low power operations, having developed into a successful service, should be protected where possible in the face of these drastic consequences.

For the foregoing reasons, Paxson requests reconsideration and clarification of the *R&Os*.

Respectfully submitted,

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June 13, 1997

ATTACHMENT A

Paxson LPTV Stations

PAXSON LPTV STATIONS

WNYA-LP, Channel 38, Amityville, NY
W23BA, Channel 23, East Orange, NJ
WKOB-LP, Channel 53, New York, NY
W54CN, Channel 54, Boston, MA
W42AM, Channel 42, Daytona Beach, FL
W31AU, Channel 31, Orlando, FL
K40FF, Channel 40, St. Louis, MO
K17EM, Channel 17, Fort Collins, CO
K33DB, Channel 33, Houston, TX
K67FE, Channel 67, Phoenix, AZ
W55CD, Channel 55, Chattanooga, TN
W66BA, Channel 66, Dalton, GA
WSIT-LP, Channel 42, Washington, DC
W57CJ, Channel 57, Fort Myers, FL
W59DF, Channel 59, Jupiter, FL
W69CS, Channel 69, Buffalo, NY
W63BM, Channel 63, Rochester, NY
WPBI-LP, Channel 36, West Palm Beach, FL
W48AV, Channel 48, Detroit, MI
K09XA, Channel 9, Fresno, CA

ATTACHMENT B

Engineering Reports

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MEMORANDUM

Date: May 11, 1997

To: Paul Atwell

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Subject: Paxson's LPTV Stations

This memo will report on our studies concerning the potential impact of the FCC's DTV allotment table on the list of Paxson's 22 low power television (LPTV) stations. It is our opinion that LPTV stations will only be impacted by DTV assignments which are co-channel or 1st adjacent channel to the LPTV operation. The interference which may result from a "taboo" problem is expected to be rare in occurrence and small in area when it does occur. We shall address each LPTV station separately. The information is based on use of the FCC's TV database.

1. WNYA-LP, Channel 38, Amityville, NY

Station WNYA-LP is licensed to operate with a directional antenna (DA) system. The maximum visual effective radiated power (ERP) is 12.6 kilowatts (kW). The maximum antenna height above average terrain (HAAT) is 104 meters. The station has an application pending (BPTTL-960516MA) to change the DA system and increase maximum visual ERP to 21 kW. The FCC made the following pertinent DTV allotments near WNYA-LP.

Station	NTSC Chan.	DTV Chan.	Bearing	Distance
WWOR-TV, Secaucus, NJ	9	38	264 deg.	33 km
WEDY, New Haven, CT	*65	39	43	88
WRGB, Schenectady, NY	6	39	352	212

The FCC has proposed to assign DTV channel 38 to station WWOR-TV on NTSC channel 9 at Secaucus, NJ. Station WWOR-TV is only 20.5 miles west of the WNYA-LP site. WWOR-TV will displace WNYA-LP upon implementation of its DTV operation on channel 38.

2. W23BA, Channel 23, East Orange, NJ

Station W23BA is licensed to operate with a DA system having a maximum visual ERP of 10.1 kW. The maximum antenna HAAT is 199 meters. Station W23BA has an application pending (BPTTL-960517YL) to increase maximum visual ERP to 25 kW. The FCC made the following pertinent DTV allotments near W23BA.

Station	NTSC Chan.	DTV Chan.	Bearing	Distance
WLIW, Garden City, NY	*21	22	91 deg.	67 km
WHSI-TV, Smithtown, NY	67	23	84	109
WLYH-TV, Lancaster, PA	15	23	253	197
WNYE-TV, New York, NY	*25	24	105	23

Activation of WNYE-TV's DTV operation on channel 24 will likely displace W23BA. Depending on the level of DTV facilities activated by WHSI-TV on channel 23, W23BA could also be displaced by that operation.

3. WKOB-LP, Channel 53, New York, NY

Station WKOB-LP is licensed to operate with a DA system having a maximum visual ERP of 6.73 kW. The maximum antenna HAAT is 363 meters. The FCC made the following pertinent DTV allotments near WKOB-LP.

Station	NTSC Chan.	DTV Chan.	Bearing	Distance
WEDW, Bridgeport, CT	49	52	48 deg.	89 km
WHSE-TV, Newark, NJ	68	53	0	0

Activation of WHSE-TV's DTV operation on channel 53 will displace WKOB-LP.

4. W54CN, Channel 54, Boston, MA

Station W54CN is licensed to operate with a DA system having a maximum visual ERP of 16.7 kW. Then maximum antenna HAAT is 276 meters. The FCC made the following pertinent DTV allotments near W54CN.

Station	NTSC Chan.	DTV Chan.	Bearing	Distance
WNAC-TV, Providence, RI	64	54	187 deg.	49 km

Activation of WNAC-TV's DTV operation on channel 54 will displace W54CN.

5. W58BY, Channel 58, Conway, NH

Station W58BY holds a CP (BMPTT-910503Q2) to operate with a non-directional antenna system. The visual ERP is 6.56 kW and the maximum antenna HAAT is 1413 meters. Station W58BY has an application pending (BMPTT-960517MK) to install a DA system. The maximum visual ERP will be 38 kW and the maximum antenna HAAT will be 1407 meters. The following are the closest pertinent DTV allotments to W58BY.

Station	NTSC Chan.	DTV Chan.	Bearing	Distance
WENH-TV, Durham, NH	*11	57	176 deg.	122 km
WGBY-TV, Springfield, MA	*57	58	206	250
WMUR-TV, Manchester, NH	9	59	189	145

The separations should be large enough so that W58BY will probably not be displaced by the DTV allotments.

6. W42AM, Channel 42, Daytona Beach, FL

Station W42AM is licensed to operate with a DA system having a maximum visual ERP of 48.4 kW. The maximum antenna HAAT is 123 meters. The following are pertinent DTV allotments near W42AM.

Station	NTSC Chan.	DTV Chan.	Bearing	Distance
WRBW, Orlando, FL	65	41	173 deg.	66 km
WJXT, Jacksonville, FL	4	42	343	128
WFCT, Bradenton, FL	66	42	209	223

Depending on the level of DTV facilities used to activate WRBW's operation on channel 41, W42AM may be displaced. For instance, if WRBW implements its full authorized DTV facilities, W42AM will be displaced from its current operation. It is likely that WJXT's DTV operation on channel 42 will at least require a substantial power reduction and/or pattern change for W42AM. We can do more detailed studies if you desire, based on assumed DTV operations at the above stations.

7. W31AU, Channel 31, Orlando, FL

Station W31AU is licensed to operate with a non-directional antenna system. The visual ERP is 9.9 kW and the maximum antenna HAAT is 140 meters. Station W31AU holds a CP

(BPTTL-960516LZ) to change to a DA system and increase the maximum visual ERP to 32.5 kW. The pertinent DTV allotments near W31AU are provided below.

Station	NTSC Chan.	DTV Chan.	Bearing	Distance
WBCC, Cocoa, FL	*68	30	122 deg.	62 km
WOGX, Ocala, FL	51	31	315	119
WGCU, Fort Myers, FL	*30	31	189	201

Depending on the DTV facilities implemented by WOGX on channel 31, W31AU will probably need to substantially reduce power and/or change its antenna pattern. In addition, there is an application pending for NTSC channel 31 at Kenansville, Florida, only 137 kilometers southeast of W31AU. If granted, the proposed Kenansville operation could be a problem for W31AU. We can perform more detailed studies based on assumed DTV facilities at the above stations if desired.

8. K40FF, Channel 40, St. Louis, MO

Station K40FF holds a CP to operate on channel 40 with a non-directional antenna system. The visual ERP is 15.6 kW and the maximum antenna HAAT is 151 meters. The following are the pertinent DTV allotments near K40FF.

Station	NTSC Chan.	DTV Chan.	Bearing	Distance
KETC, St. Louis, MO	*9	39	195 deg.	18 km
WSIU-TV, Carbondale, Il	*8	40	121	113
WHOI, Peoria, IL	19	40	16	233

The activation of KETC's DTV operation on channel 39 will displace K40FF. Because of the power differences it is questionable whether the K40FF and KETC DTV operation on channel 39 can co-existing even if co-located due to interference being received by K40FF. Depending on the facilities implemented for WSIU-TV's DTV operation on channel 40, station K40FF will need to substantially reduce ERP and/or change antenna pattern. In addition, there is an application pending for NTSC channel *40 at St. Louis.

9. K17EM, Channel 17, Fort Collins, CO

Station K17EM holds a CP (BPTT-960517NG) to operate on channel 17 with a DA system. The maximum visual ERP is 17.4 kW and the maximum antenna HAAT is 642 meters. The pertinent DTV allotments near K17EM are given below.

Station	NTSC Chan.	DTV Chan.	Bearing	Distance
KUSA-TV, Denver, CO	9	16	182 deg.	91 km
KMGH-TV, Denver, CO	7	17	182	91
KRMA-TV, Denver, CO	*6	18	183	91

Activation of KMGH-TV's DTV operation on channel 17 will probably displace station K17EM.

10. K33DB, Channel 33, Houston, TX

Station K33DB is licensed to operate with a DA system having a maximum visual ERP of 34.3 kW. The maximum antenna HAAT is 516 meters. The following are the closest pertinent DTV allotments to K33DB.

Station	NTSC Chan.	DTV Chan.	Bearing	Distance
KTRK-TV, Houston, TX	13	32	98 deg.	2 km
KITU, Beaumont, TX	*34	33	66	168
KUUE-TV, Austin, TX	24	33	291	236

Station K33DB will need to modify its operation to protect KITU's DTV operation on channel 33. Station K33DB will also need to determine if it can co-exist with KTRK-TV's DTV operation on adjacent channel 32 without receiving intolerable interference. More detailed studies based on assumed DTV facilities for the above stations can be performed if desired.

11. K67FE, Channel 67, Phoenix, AZ

Station K67FE is licensed to operate with a DA system having a maximum visual ERP of 0.73 kW. The maximum antenna HAAT is 511 meters. There are no pertinent DTV allotments on the co and adjacent channels within 300 kilometers of the K67FE site. This is probably because of channel 67 being outside of the FCC's core spectrum for TV, and channels 60-69 will eventually be re-allocated to other services (ie, no longer used for TV service).

12. W55CD, Channel 55, Chattanooga, TN

Station W55CD is licensed to operate with a DA system having a maximum visual ERP of 35.4 kW. The maximum antenna HAAT is 461 meters. The following are pertinent DTV allotments near W55CD.

Station	NTSC Chan.	DTV Chan.	Bearing	Distance
WRCB-TV, Chattanooga, TN	3	55	211 deg.	6 km

Activation of WRCB-TV's DTV operation on channel 55 will displace W55CD.

13. W66BA, Channel 66, Dalton, GA

Station W66BA is licensed to operate with a DA system having a maximum visual ERP of 6.31 kW. The maximum antenna HAAT is 84 meters. There are no pertinent DTV allotments on channels 65 through 67 to impact W66BA. Channel 66 is outside the TV core spectrum, and will eventually be re-allocated to other services.

14. WSIT-LP, Channel 42, Washington, DC

Station WSIT-LP is licensed to operate with a DA system having a maximum visual ERP of 15.5 kW. The maximum antenna HAAT is 149 meters. The closest pertinent DTV allotments to WSIT-LP are given below.

Station	NTSC Chan.	DTV Chan.	Bearing	Distance
WHSW-TV, Baltimore, MD	24	41	35 deg.	47 km
WMPT, Annapolis, MD	*22	42	78	41
WTXF, Philadelphia, PA	29	42	51	200

Activation of WMPT's DTV operation on channel 42 will displace WSIT-LP. The same impact occurs to WSIT-LP from WHSW-TV's DTV operation on channel 41 if WHSW-TV operates with the authorized DTV facilities.

15. W57CJ, Channel 57, Fort Myers, FL

Station W57CJ is licensed to operate with a DA system having a maximum visual ERP of 15.8 kW. The maximum antenna HAAT is 125 meters. The closest pertinent DTV allotments to W57CJ are given below.

Station	NTSC Chan.	DTV Chan.	Bearing	Distance
WTTA, St. Petersburg, FL	38	57	345 deg.	153 km

Activation of WTTA's DTV operation on channel 57 will require substantial reduction in W57CJ's power and/or changes to the antenna pattern. More detailed studies can be undertaken based on assumed facilities for WTTA's DTV operation if desired.

16. W59DF, Channel 59, Jupiter, FL

Station W59DF holds a CP to operate with a DA system having a maximum visual ERP of 111 kW. The maximum antenna HAAT is 93 meters. The following are the closest pertinent DTV allotments to W59DF.

Station	NTSC Chan.	DTV Chan.	Bearing	Distance
WTOG, St. Petersburg, FL	44	59	295 deg.	234 km

Full implementation of WTOG's DTV facility may require a reduction in W59DF's power and/or alteration of its antenna pattern. In addition, there are 3 pending applications for operation on NTSC channel 59 at Stuart (11-23 km from W59DF). If an NTSC operation on channel 59 at Stuart is granted and constructed, W59DF will be displaced.

17. W69CS, Channel 69, Buffalo, NY

Station W69Cs is licensed to operate with a DA system having a maximum visual ERP of 0.82 kW. The maximum antenna HAAT is 180 meters. Station W69CS also has an application pending (BPTTL-960515LH) requesting a change in DA system and increase in maximum visual ERP to 11.6 kW. There are no pertinent DTV allotments on channels 68 through 69 to impact W69CS. Channel 69 is outside the TV core spectrum, and will eventually be re-allocated for other services.

18. W63BM, Channel 63, Rochester, NY

Station W63BM is licensed to operate with a DA system having a maximum visual ERP of 1.5 kW. The maximum antenna HAAT is 161 meters. Station W63BM also has an application pending (BPTTL-960515LI) to install a non-directional antenna system, increase visual ERP to 8.83 kW, and increase the maximum antenna HAAT to 169 meters. There are no pertinent DTV allotments on channels 62 through 64 to impact W63BM. Channel 63 is outside the TV core spectrum. Channels 60 to 69 will eventually be re-allocated to other services.

19. W60CL, Channel 60, Prichard, AL

Station W60CL is licensed to operate with a non-directional antenna system. The visual ERP is 21.3 kW and the maximum antenna HAAT is 162 meters. There do not appear to be any DTV allotments on channels 59 through 61 which impact W60CL. Channel 60 is outside the TV core spectrum. Channels 60-69 will eventually be re-allocated to other services. There are 3 pending applications for NTSC channel 61 at Mobile, Alabama. If one of these applications is granted and constructed, it could require changes to W60CL, including possible displacement.

20. WPBI-LP, Channel 36, West Palm Beach, FL

Station WPBI-LP is licensed to operate with a DA system having a maximum visual ERP of 105 kW. The maximum antenna HAAT is 160 meters. The following are the closest pertinent DTV allotments to WPBI-LP.

Station	NTSC Chan.	DTV Chan.	Bearing	Distance
WHBI, Lake Worth, FL	67	36	184 deg.	8 km

Activation of WHBI's DTV operation on channel 36 will displace WPBI-LP

21. W48AV, Channel 48, Detroit, MI

Station W48AV is licensed to operate with a DA system having a maximum visual ERP of 38.2 kW. The maximum antenna HAAT is 102 meters. The following are the closest pertinent DTV allotments to W48AV.

Station	NTSC Chan.	DTV Chan.	Bearing	Distance
WAQP, Saginaw, MI	49	48	312 deg.	128 km
WNWO-TV, Toledo, OH	24	49	204	97

Activation of WAQP's DTV operation on channel 48 will require changes to W48AV, and possible displacement depending on the DTV facilities. If desired, more detailed studies can be performed based on assumed DTV facilities for WAQP.

22. K09XA, Channel 9, Fresno, CA

Station K09XA holds a CP (BPTTV-940415L7) to operate with a DA system having a maximum visual ERP of 0.558 kW. The maximum antenna HAAT is 983 meters. The following are the closest pertinent DTV allotments to K09XA.

Station	NTSC Chan.	DTV Chan.	Bearing	Distance
KFSN-TV, Fresno, CA	30	9	345 deg.	0.4 km

Activation of KFSN-TV's operation on DTV channel 9 will displace K09XA.

This completes the preliminary study concerning the Paxson LPTV stations. If you have any questions, need additional information, or wish to discuss any of the operations in more detail, please call. We can also do more detailed interference studies for those stations you desire this information.

dLR:2667.4342

cc:David Glenn
Bill Watson
John Feore